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A P P E N D I X

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-664

VENTURA COUNTY,

Appellant,

v.

GULF OIL CORPORATION,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDIX TO JURISDICTIONAL STATEMENT

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F I L E D

AUG 3 1979

EMIL E. MELFI, JR., CLERK
U. S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VENTURA COUNTY, Appellant,	)	No. 77-2319
v.	)	No. 77-2716
GULF OIL CORPORATION, Appellee.	)	OPINION

Appeal from the United States District Court for the Central District of California

Before: HUFSTEDLER and WRIGHT, Circuit Judges, and CALLISTER,* District Judge

HUFSTEDLER, Circuit Judge:

The question on appeal is whether the County of Ventura ("Ventura") can require the federal Government's lessee,

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* Honorable Marion J. Callister, United States District Judge, District of Idaho, sitting by designation.

Gulf Oil Corporation ("Gulf"), to obtain a permit from Ventura in compliance with Ventura's zoning ordinances governing oil exploration and extraction activities before Gulf can exercise its rights under the lease and drilling permits acquired from the Government. The district court denied Ventura's motion for a preliminary injunction, and dismissed Ventura's second amended complaint. Ventura appeals. We uphold the district court because the local ordinances impermissibly conflict with congressional regulation of Gulf's activities on government land.

On January 1, 1974, the Department of the Interior, Bureau of Land Management, pursuant to the Mineral Lands Leasing Act of 1920 (30 U.S.C. §§ 181 et seq.), leased 120 acres located within the Los Padres National Forest in Ventura for purposes of oil exploration and development. A subsequent assignment of this lease to Gulf was approved by the Department of the Interior, effective April 1, 1974. On February 25, 1976, the United States Department of the Interior, Geological

Survey, issued a permit approving Gulf's proposal to drill an oil well pursuant to its lease. On March 8, 1976, and April 15, 1976, the United States Department of Agriculture, Forest Service, also granted its permission, and on March 8, 1976, the California Resources Agency, Division of Oil and Gas, approved the proposed exploration. After drilling operations were commenced on April 28, 1976, Gulf pursued activities related to oil exploration and extraction on the leased property, and it intends to continue development of both its present and other drill sites.

Throughout this period the leased property has been zoned Open Space ("O-S") by Ventura. Under its zoning ordinance, oil exploration and extraction activities are prohibited on O-S property unless an Open Space Use Permit is obtained from the Ventura County Planning Commission in accordance with Articles 25 and 43 of the Ventura County Ordinance Code. The O-S Use Permits are granted for such time and upon such conditions as the Planning Commission

considers in the public interest. The permits contain 11 mandatory conditions and additional conditions are committed to the Planning Board's discretion.

On May 5, 1976, Ventura advised Gulf that it must obtain an O-S Use Permit if it wished to continue its drilling operations. Gulf refused to comply, and on May 20, 1976, Ventura brought suit in the California Superior Court seeking a declaratory judgment that Gulf's activities are subject to Ventura's zoning ordinances. The case was removed to the district court. Following the filing of its second amended complaint, Ventura moved for a preliminary injunction with respect to the first two counts of its second amended complaint, and Gulf moved to dismiss the complaint. The trial on the merits was consolidated with the hearing on Gulf's motions. After denying the injunction, the district court finally dismissed the action.[1/]

Ventura contends that the district court erred in concluding that the Supremacy Clause of the Constitution

precludes enforcement of the zoning ordinances against Gulf both because Congress lacked the power to preempt local regulation and because, even assuming Congress had such power, its enactments provide no basis for finding preemption, either express or implied.

Although Ventura and amicus argue extensively that congressional enactments under the Property Clause[2/] generally possess no preemptive capability, we believe that Kleppe v. New Mexico (1976) 426 U.S. 529, is dispositive. In Kleppe, New Mexico authorities entered federal lands and rounded up 19 wild burros pursuant to the New Mexico Estray Law, N.M. Stat. Ann. § 47-14-1 et seq. (1966). The Bureau of Land Management demanded the return of the burros under the Wild Free-roaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340, which was passed in 1971 to protect wild horses and burros on the public lands of the United States. The New Mexico authorities refused to comply and sought a declaratory judgment that the act was unconstitutional. The Supreme Court

upheld the act's constitutionality, stating:

> "Absent consent or cession a State undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the Property Clause. And when Congress so acts, the federal legislation necessarily overrides conflicting state laws under the Supremacy Clause. As we said in Camfield v. United States, 167 U.S., at 526, in response to a somewhat different claim: 'A different rule would place the public domain of the United States completely at the mercy of state legislation.'" (Kleppe v. New Mexico, supra, 426 U.S. at 543 (citations omitted).)

New Mexico has argued for a narrow reading of the Property Clause, contending that the clause provided an independent basis of congressional jurisdiction only for acts concerning the disposition of federal property or incidental rules regarding its use and for acts necessary to protect federal lands. The Supreme Court stated in response that "we reject appellees' narrow reading of the Property Clause," and later continued that "while the furthest reaches of the power granted

by the Property Clause have not yet been definitely resolved, we have repeatedly observed that '[t]he power over the public land thus entrusted to Congress is without limitations.'" (Id. at 537 and 539.) In light of Kleppe, the renewed attempt to restrict the scope of congressional power under the Property Clause in the present case is legally frivolous.

Ventura next contends that even if Congress had the power to enact overriding legislation, there is no evidence of either a congressional intent to preempt local regulation or a conflict between local and federal law that can be resolved only by exclusion of local jurisdiction. We need not consider the extent to which local regulation of any aspect of oil exploration and extraction upon federal lands is precluded by federal legislation; the local ordinances impermissibly conflict with the Mineral Lands Leasing Act of 1920 and on this basis alone they cannot be applied to Gulf.

The extensive regulation of oil exploration and drilling under the

Mineral Leasing Act is evident from the present record. The basic lease assigned to Gulf in 1974 contains approximately 45 paragraphs including requirements of diligence and protection of the environment as well as reservation of a one-eighth royalty interest in the United States. Because the lands lie within a National Forest, the lease requires Gulf's acceptance of additional Department of Agriculture conditions designed to combat the environmental hazards normally incident to mining operations. Specific drilling permits were also required from the Department of the Interior, Geological Survey, and the Department of Agriculture, Forest Service. The Geological Survey, which has formalized its procedures in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.), approved the proposed drilling on February 25, 1976, subject to 10 conditions which assure continued and detailed supervision of Gulf's activities. And on March 8, and April 15,

1976, the Forest Service issued a drilling permit subject to conditions focusing upon protection of the National Forest. Finally, Gulf is subject to the extensive regulations governing oil and gas leasing (43 C.F.R., Part 3100) and both sub-surface and surface operations (30 C.F.R., Part 221) promulgated by the Secretary of the Interior under his authority "to prescribe necessary and proper rules and regulations to do any and all things necessary to carry out and accomplish the purposes" of the act. (30 U.S.C. § 189.) And since the lease concerns lands within a National Forest, Secretary of Agriculture regulations governing oil and gas development are also applicable. (36 C.F.R., Part 252.)

Despite this extensive federal scheme reflecting concern for the local environment as well as development of the nation's resources, Ventura demands a right of final approval. Ventura seeks to prohibit further activity by Gulf until it secures an Open Space Use Permit which may be issued on whatever conditions Ventura determines appropriate, or which may never be issued at

all. The federal Government has authorized a specific use of federal lands, and Ventura cannot prohibit that use, either temporarily or permanently, in an attempt to substitute its judgment for that of Congress.

The present conflict is no less direct than that in Kleppe v. New Mexico, supra. Like Kleppe, our case involves a power struggle between local and federal governments concerning appropriate use of the public lands. That the New Mexico Authorities wished to engage in activity that Congress prohibited, while the Ventura authorities wish to regulate conduct which Congress has authorized is a distinction without a legal difference.

Relying upon Huron Portland Cement Co. v. Detroit (1960) 362 U.S. 440, Ventura argues that this conclusion is unjustified because, unlike Kleppe, the present conflict has not ripened. (See also Askew v. American Waterways Operators (1973) 411 U.S. 325.) In Huron, the Court allowed application of a local smoke abatement ordinance to a vessel

whose equipment had been federally licensed only because it concluded "that there is no overlap between the scope of the federal ship inspection laws and that of the municipal ordinance here involved."[3/] (Huron, supra, at 446.) Ventura prefers the Court's observation: "To hold otherwise would be to ignore the teaching of this Court's decisions which enjoin seeking out conflicts between state and federal legislation where none clearly exists." (Id. at 446.) It argues that since Gulf has never applied for a use permit, an adjudication of preemption is in conflict with Huron. We disagree. This argument ignores the very relief that Ventura sought when it asked to enjoin Gulf's operations. Ventura cannot bring an action seeking immediate recognition and implementation of its veto power over the Government's lessee, and successfully contend that an adverse ruling would require "seeking out conflict" unnecessarily. The issue is whether Ventura has the power of ultimate control over the Government's lessee, and

this issue persists whether or not a use permit would eventually be granted.

Federal Power Commission v. Oregon (1955) 349 U.S. 435, presented a similar question. In that case, the Federal Power Commission issued a license to construct and operate a private hydro-electric plan on reserved lands of the United States. The license included permission to construct a dam across the Deschutes River. Oregon challenged the exclusive jurisdiction of the Commission, and contended that the licensee must acquire a state as well as a federal permit. The Court held that the Commission's jurisdiction over the reserved lands of the United States was proper under the Property Clause, and that this jurisdiction was exclusive: "To allow Oregon to veto such use, by requiring the State's additional permission, would result in the very duplication of regulatory control precluded by the First Iowa decision. 328 U.S. 152, 177-179. No such duplication of authority is called for by the Act." (Id. at 445. See Federal Power Act, 16 U.S.C. §§ 791a-825r.)

Ventura attempts to distinguish Federal Power Commission v. Oregon on the basis of reservations of local jurisdiction contained in sections 30 and 32 of the Mineral Lands Leasing Act (30 U.S.C. §§ 187, 189).[4/] It contends that although preemption was perhaps appropriate in light of the narrow reservations of local jurisdiction in the Federal Power Act, a similar finding in the present case is unwarranted given the broad savings provisions contained in the Mineral Lands Leasing Act.

The proviso in § 187 provides that "[n]one of such provisions shall be in conflict with the laws of the states in which the leased property is situated." (30 U.S.C. § 187.) But, as Gulf points out, by the use of the language "such provisions," the proviso relates only to the provisions of the preceding sentence. These provisions relate to employment practices, prevention of undue waste and monopoly, and diligence requirements. There is no mention of land use planning controls. Moreover, the proviso assures only that the Secretary of the Interior shall observe state

standards in drafting the lease's terms. It is not a recognition of concurrent state jurisdiction.

Nor is the savings clause in § 189 of any avail. After delegating to the Secretary of the Interior broad authority to prescribe rules and regulations necessary to effect the purposes of the act, the section continues:

> "Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States." (30 U.S.C. § 189.)

The proviso preserves to the states only "any rights which they may have." While this is an express recognition of the right of the states to tax activities of the Government's lessee pursuant to its lease (Oklahoma Tax Commission v. Texas Co. (1949) 336 U.S. 342), and has been relied upon in part to uphold forced pooling and well spacing of federal

mineral lessee operations (Texas Oil & Gas Corp. v. Phillips Petroleum Co. (W.D. Okla. 1967) 277 F. Supp. 366, 369, aff'd (10th Cir. 1969) 406 F.2d 1303, 1304), the proviso cannot give authority to the state which it does not already possess. Although state law may apply where it presents "no significant threat to any identifiable federal policy or interest" (Texas Oil & Gas Corp. v. Phillips Petroleum Co., supra, at 371), the states and their subdivisions have no right to apply local regulations impermissibly conflicting with achievement of a congressionally approved use of federal lands and the proviso of § 189 does not alter this principle.

Finally, we are reassured in the correctness of our decision by policy considerations implicitly reflected in the structure and operation of the Mineral Lands Leasing Act of 1920 and the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.). As Ventura recognized in filing its second amended complaint, the National Environmental Protection Act ("NEPA") and the

guidelines, regulations, and Executive Orders issued in pursuance of that act,[5/] mandate extensive federal consideration and federal-local cooperation concerning the local, environmental impact of federal action under the Mineral Lands Leasing Act. If federal officials fail to comply with these requirements, Ventura has a remedy against those officials.

Our decision does not mean that local interests will be unheard or unprotected. In rejecting a local veto power while simultaneously guarding local concerns under NEPA, local interests can be represented, the integrity of the federal leases and drilling permits reconciling national energy needs and local environmental interests can be protected, and the ultimate lessee will be responsible to a single master rather than conflicting authority.

Although we recognize that federal incursions upon the historic police power of the states are not to be found without good cause (see, e.g., Rice v. Santa Fe Elevator Corp. (1947) 331 U.S. 218, 230), we must affirm because "under

the circumstances of this particular case, [the local ordinances] stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (Hines v. Davidowitz (1941) 312 U.S. 52, 67. Accord, Jones v. Rath Packing Co. (1977) 430 U.S. 519, 526.) "[W]here those state laws conflict . . . with other legislation passed pursuant to the Property Clause, the law is clear: The state laws must recede." (Kleppe v. New Mexico, supra, at 543.)

AFFIRMED.

FOOTNOTES

1/ The district court initially dismissed the first and second counts of the second amended complaint; Ventura thereafter stipulated to dismissal of the remaining counts of the complaint. Thereafter, the district court dismissed the entire action.

2/ The Property Clause of the Constitution provides that "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . . ." (U.S. Const., Art. IV, § 3, cl.2.)

3/ It has been suggested that the Court was actually applying a balancing test and that because the state's interest in air quality protection was strong and only minimally impinged the federal regulatory scheme, the local ordinance was protected. (Note, The Preemption Doctrine: Shifting Perspectives on Federalism and the Burger Court, 75 Colum. L.Rev. 623, 629 n.37 (1975).) A recent case apparently applied a flexible supremacy, balancing test. (Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Ware (1973) 414 U.S. 117.) However, the conflict in the present case strikes at the heart of the federal regulation. The Mineral Lands Leasing Act and extensive permit procedures are designed for the very purpose of

circumscribing the conditions under which the Government lessee will operate.

4/ Before its 1978 amendment, section 30 provided in pertinent part:

"Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any boy under the age of sixteen or the employment of any girl or woman, without regard to age, in any mine below the surface; provisions securing the workmen complete freedom of purchase; provisions requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of

monopoly, and for the safeguarding of the public welfare. None of such provisions shall be in conflict with the laws of the states in which the leased property is situated."

Section 32 provides:

"The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this chapter. Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States."

5/ See, e.g., National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.; Guidelines of the Council on Environmental Quality, 40 C.F.R., Part 1500; Executive Order Number 11514, 35 Fed. Reg. 4247, March 5, 1970.

F I L E D

Apr 7 - 1977

Clerk, U.S. District Court
Central District of California

By_____ Deputy

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VENTURA COUNTY, a political subdivision of the State of California, Plaintiff, vs. GULF OIL CORPORATION, et al., Defendants.	CV76-1723-ALS ORDER DENYING PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION AND DISMISSING THE FIRST AND SECOND COUNTS OF PLAINTIFF'S SECOND AMENDED COMPLAINT

On May 20, 1976, the plaintiff, Ventura County, filed a complaint in California Superior Court against defendant Gulf Oil Corporation ("Gulf Oil"), alleging that the defendant, in violation of Ventura County zoning ordinances, is conducting oil exploration and extraction

activities on property within the County which has been zoned as Open Space. Plaintiff seeks to enjoin defendant from further oil exploration on the property until Gulf Oil obtains an Open Space Use Permit as required by the County ordinances. In addition, Ventura County seeks a declaratory judgment that Gulf Oil's activities on the land are subject to the County's zoning ordinances.

On May 27, 1976, defendant Gulf Oil removed the action to this court, pursuant to 28 U.S.C. §1441, alleging that original federal jurisdiction of the action exists under 28 U.S.C. §§1331(a) and 1332. It would appear that original jurisdiction of the action exists under Title 28, United States Code, Section 1332, and, therefore, removal of the action to this court was proper.

After removal of the case, plaintiff moved for a temporary restraining order, which motion was denied on June 17, 1976. On August 4, 1976, pursuant to a stipulation of the parties and order of the court, plaintiff filed its Second Amended Complaint. The allegations in Counts

One and Two of the Second Amended Complaint parallel the allegations in plaintiff's original complaint. In addition, the complaint contains three new counts and adds the United States and various government officials as defendants to these new counts.

Plaintiff has moved for a Preliminary Injunction with respect to Counts One and Two of its Second Amended Complaint, and defendant Gulf Oil has filed a motion to dismiss the complaint. Pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, the trial on the merits of Counts One and Two was advanced and consolidated with the hearing on these motions. The matter came on regularly for trial before the honorable Albert Lee Stephens, Jr. United States District Judge. The parties having submitted a stipulated statement of facts, no oral testimony was taken. Counsel were advised that if the court later determined that oral testimony would be helpful, the parties would be given an opportunity to present such testimony to the court. Having heard oral argument of

counsel, having reviewed all filed papers and documents and being fully advised, the court determines that oral testimony is not necessary and rules as follows:

The facts surrounding Counts One and Two of plaintiff's complaint are not disputed and may be stated as follows: On January 1, 1974, the United States Department of the Interior, Bureau of Land Management, leased certain real property, located within the boundaries of the Los Padres National Forest in Ventura County, to Marcia P. Lane for oil and gas development purposes. Marcia Lane subsequently transferred her interest in the property to Gulf Oil by an assignment which was approved by the United States Department of the Interior, effective April 1, 1974. On February 25, 1976, the United States Department of the Interior, Geological Survey, issued a permit to Gulf Oil to allow drilling of an oil well on the leased property. On March 8, 1976, and April 15, 1976, the United States Department of Agriculture, Forest Service, issued additional permissions regarding drilling, and on March 8, 1976, the

California Resources Agency, Division of Oil and Gas, issued a "Report on Proposed Operations No. P276-79" approving Gulf Oil's proposal to drill an oil well.

Since receiving the above-mentioned permits, Gulf Oil has been conducting activities related to oil exploration and extraction on the leased property and Gulf Oil intends to continue developing its present drilling site and other sites on the property.

At all times relevant and material to this action, the real property upon which Gulf Oil has been conducting its oil exploration and extraction activities has been zoned Open Space ("O-S") by ordinances of Ventura County. Under these ordinances, oil exploration and extraction activities are not permitted on O-S zoned real property unless an Open Space Use Permit is obtained from the Ventura County Planning Commission as provided in Ventura County Ordinance Code articles 25 and 43. By a letter dated May 5, 1976, Ventura County advised Gulf Oil that it would have to obtain an Open

Space Use Permit from the County in order to continue its oil drilling activities on the leased property. Gulf Oil has not yet applied for or obtained such a Permit. Because Gulf Oil has continued its oil exploration and extraction activities without complying with the County's zoning ordinances, the County filed the instant suit.

Gulf Oil's Motion to Dismiss Counts One and Two

Before reaching the merits of plaintiff's claims under Counts One and Two of its complaint, defendant Gulf Oil's Motion to Dismiss must be considered. Gulf Oil contends that the First and Second Counts of plaintiff's Second Amended Complaint must be dismissed pursuant to Rule 19(b) of the Federal Rules of Civil Procedure because the United States is an indispensable party to these Counts.

The question of whether a party is "indispensable" to an action, thereby requiring its dismissal, is governed by Rule 19, which provides in pertinent part as follows:

(a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff

but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a) (1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed,,the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by

the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Whether a party is or is not deemed to be indispensable to an action under Rule 19 depends, in large part, on the particular facts of each case. Rule 19 requires a pragmatic analysis and directs the court to look into the practical effects a judgment may have upon the absent parties. Advisory Committee's Note, 39 F.R.D. 69, 90-93 (1966).

Based upon a review of the facts of the instant case, it would appear that the United States is a person to be joined "if feasible," under Rule 19(a). The property which is the subject of this litigation is located within a national forest and is owned by the United States government. The defendant Gulf Oil is presently conducting oil exploration and

extraction activities on the property pursuant to a lease from the United States Department of the Interior under which the United States has reserved a royalty interest in oil removed or sold from the leased lands.

The County seeks, through this action, to enjoin Gulf Oil from continuing its activities on the land unless and until Gulf Oil obtains an open space use permit. If a judgment were to be entered in favor of the plaintiff and an injunction against Gulf Oil were to issue, the defendant would be required to cease, at least temporarily, all oil exploration and extraction on the property. While such a judgment would not affect the United States' title in the subject property, an injunction against Gulf Oil from further drilling clearly would affect the royalty interest which the government has reserved in the lease. It would appear, therefore, that the United States claims an interest in the subject of the action and a disposition in its absence may impair or impede its ability to protect

that interest. Thus, under Rule 19(a)(2)(i), the United States should be joined if feasible.

Gulf Oil contends, however, that the United States cannot be joined because it has not consented to be sued in this type of action. Assuming that joinder of the United States is impossible because of sovereign immunity, it must next be determined, pursuant to Rule 19(b), whether "in equity and good conscience" the action should proceed in the absence of the United States or should be dismissed, the United States being regarded as indispensable. Rule 19 sets out four factors to be considered by the court in determining whether an action should be dismissed for nonjoinder. A consideration of these factors as they apply to the instant case leads to the conclusion that the action should not be dismissed. Of the four factors listed in Rule 19(b), two are particularly applicable.

One factor which Rule 19(b) directs the courts to consider is the extent to which prejudice to the absent person can be lessened or avoided. It would

appear that any prejudice the United States may have suffered by not being joined as a party in the instant action has been avoided or at least lessened by its being permitted to appear as amicus curiae. At the request of the United States Attorney, the United States was permitted to file an amicus curiae brief in the instant case on August 10, 1976, and at the trial on November 1, an Assistant United States Attorney was permitted to present the views of the United States in the form of oral argument. Thus, the position of the United States with respect to the claims raised by the plaintiff in its first two counts has been thoroughly briefed and argued and is before the court.

Another factor to be considered by the courts is whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. It would appear that a dismissal of this action for failure to join the United States as a party would leave the plaintiff without a remedy, there being no alternative forum within which the plaintiff could litigate its claims.

Based upon the above considerations, it appears that the prejudice which would be suffered by the plaintiff if the action were dismissed far outweighs any prejudice which might be suffered by the United States if the action is allowed to proceed in its absence. Since the equities clearly weigh in favor of the plaintiff, the action should not be dismissed for failure to join the United States as a party.

Plaintiff's Motion for a Preliminary Injunction and Trial on the Merits

There has been some dispute as to the exact nature of the issue to be decided in this case. In Counts One and Two of its Second Amended Complaint, the plaintiff requests the court to rule that in conducting its oil exploration and extraction activities on land leased from the federal government, Gulf Oil must comply with the County's zoning ordinances. It would appear, therefore, that to formulate the issue raised by the first two counts of plaintiff's complaint, the zoning ordinances which Ventura County is seeking to have

applied to Gulf Oil's activities and the effect of their application must be considered.

The ordinances which are the subject of this lawsuit are found in Articles 25 and 43 of the Ventura County Ordinance Code. In sum, they provide that oil exploration and extraction activities are not permitted on real property zoned Open Space unless an Open Space Use Permit has been obtained from the Ventura County Planning Commission. To obtain a use permit, an application must be filed with the Planning Commission. The Commission then has the power to grant a permit for such time and upon such conditions and limitations as it deems necessary, or it may deny the issuance of a permit. What we are dealing with, therefore, is an attempt by the County not merely to regulate Gulf Oil's activities on federal land but to prohibit those activities pending the approval of a permit.

If it were adjudged that Gulf Oil's activities are subject to the above zoning ordinances, Gulf Oil necessarily

would be required to cease all oil exploration and extraction activities. The cessation of its drilling might be permanent or only temporary, depending upon whether Gulf Oil ever applied for a permit or, even assuming it did apply, whether the Planning Commission ever granted such a permit. It would appear, therefore, that the precise issue raised by the instant action may be stated as follows: Whether the County of Ventura can, through its zoning ordinances, prohibit Gulf Oil, either temporarily or permanently, from using land which Gulf has leased from the federal government in a manner authorized by permits already obtained by Gulf Oil from federal agencies. The issue appears to be one of first impression.

Defendant Gulf Oil contends that the County's zoning ordinances are not applicable to Gulf's activities on federal land for the following reasons: 1) the doctrine of sovereign immunity prohibits the plaintiff from enforcing its zoning laws against Gulf; 2) the Supremacy Clause precludes plaintiff from enforcing its ordinances against Gulf;

and 3) subjecting federal oil and gas leases to County zoning jursidiction would thwart the National Energy Policy.

Gulf Oil contends that it is an instrumentality or agent of the federal government by virtue of its lease with the United States, and as such, it enjoys immunity from Ventura County's zoning ordinances. It would appear, however, that a private lessee under the Federal Mineral Leasing Act has no "instrumentality" status and, therefore, Gulf Oil cannot claim the protection of sovereign immunity. See Oklahoma Tax Comm'n vs. Texas Co., 336 U.S. 342 (1949).

Gulf Oil also asserts, however, that the County's zoning ordinances, which require Gulf to obtain a permit prior to drilling, conflict with provisions of the Federal Mineral Leasing Act of 1920 (30 U.S.C. §181 et seq.) and that the application of these ordinances to Gulf Oil's activities would substantially interfere with a federal policy and interest. It is Gulf Oil's contention, therefore, that under the Supremacy Clause of the Constitution, the County

cannot enforce these zoning ordinances against Gulf Oil.

California retains civil and criminal jurisdiction over the Los Padres National Forest notwithstanding the fact that the forest is owned by the federal government. 16 U.S.C. §480; See also United States vs. County of Fresno, ___ U.S. ___, 45 U.S.L.W. 4131, 4132 (January 25, 1977). While the State retains jurisdiction over these federal lands, Congress retains the power to enact legislation respecting these lands pursuant to the Property Clause and any legislation so enacted necessarily overrides conflicting State laws under the Supremacy Clause. See Kleppe vs. New Mexico, 426 U.S. 529, 543 (1976). Therefore, the extent to which Congress has exercised its power under the Property Clause with respect to federal lands which have been leased by the Government for oil and gas mining purposes, must be determined in order to ascertain the applicability of the zoning ordinances at issue in the instant case.

In 1920, Congress enacted the Mineral Lands Leasing Act ("Act") (30 U.S.C.

§181 et seq.). This Act provides for the leasing of lands owned by the United States, including national forests, for oil and gas development purposes. The Act sets forth in detail, among other things, the manner in which an oil and gas lease may be granted, the rents and royalties on production to be paid the government, and numerous conditions and limitations on the activities of the lessee under the lease. (30 U.S.C. §221 et seq.) Gulf Oil's lease was granted pursuant to this Act and defendant is subject to the provisions of that Act and to all rules and regulations of the Secretary of the Interior promulgated thereunder (Exhibit A of Plaintiff's Second Amended Complaint).

A principal purpose of the Act is "to promote the orderly development of the oil and gas deposits in the publicly owned lands of the United States through private enterprise." See Harvey vs. Udall, 384 F.2d 883, 885 (10th Cir. 1967). The purpose of the Act takes on added importance today, in view of the shortage of domestic reserves of oil and gas. As early as 1960, the

importance of public lands as a source for gas and oil was recognized. In recommending that certain revisions of the Act be made, the Committee on Interior and Insular Affairs noted that there had been a "potentially dangerous slackening in exploration for development of domestic reserves of oil and gas." It was the Committee's belief, at that time, that the proposed revisions to the Act would "remove certain legislative obstacles to exploration for development of the mineral resources of the public lands and spur greater activity for increasing our domestic reserve." 1960 U.S. Cong. and Adm. News, Vol. 2, 86th Cong. 3314-15.

In view of the clear federal policy, codified in the Mineral Leasing Act, of developing oil and gas deposits on public lands, it does not appear that the County of Ventura can, consistent with the Supremacy Clause, require a private lessee of federal land to obtain a use permit before it can engage in oil exploration and extraction pursuant to a federal oil and gas lease. The imposition of such a permit requirement

would, as a practical matter, have the effect of overriding the decision by the federal government to grant the lease. Such a requirement would interfere with the leasing activities of the federal government under the Act and with the government's policy of encouraging the development of ~~oil and gas~~.

In addition, if Gulf Oil were ordered to comply with Ventura County's open space permit requirements, the federal government's royalty interest in oil production would be threatened as Gulf Oil would be required to cease its operations until a permit was obtained.

In arguing that its zoning ordinances do not conflict with the provisions or policy of the Mineral Leasing Act, the plaintiff relies principally on the case of Texas Oil and Gas Corp. vs. Phillips Petroleum Co., 277 F. Supp. 366 (W.D. Okla. 1967) aff'd 406 F.2d 1303 (10th Cir. 1969) cert. denied 396 U.S. 829. Since the facts of Texas Oil and Gas are somewhat similar to the facts of the instant case, it deserves special consideration.

In Texas Oil and Gas, the plaintiffs owned oil and gas leases on federal lands situated in Oklahoma. The federal government executed these leases pursuant to the Mineral Leasing Act. The Corporation Commission of the State of Oklahoma issued an order by which the Tonkawa formation underlying these leases was forced pooled and pursuant to this order the working interests under the leases as to the Tonkawa formation were then owned by the defendant Phillips Petroleum. The plaintiffs asserted that this forced pooling order of the Oklahoma Corporation Commission was void as to their working interests in the formation because the lands involved belong to the United States and that by virtue of the Property Clause of the Constitution and the provisions of the Mineral Leasing Act, exclusive control over these lands resides in the United States government.

After reviewing the Mineral Leasing Act and the rules and regulations promulgated thereunder, the district court determined that "[n]othing in these cited statutes (nor the entire Act itself)

specifically indicates that Congress has undertaken to reserve unto itself exclusive control over federal lands leased for oil and gas development to the exclusion of the States." Id. at 369. Therefore, the court held that the forced pooling Order was valid and applied to the federal lands leased by the plaintiff. The court reached this conclusion, however, only after it determined that the application of the pooling Order to federal lands would not present a significant threat to any identifiable federal policy or interest. Id. at 371. It is this finding which distinguishes Texas Oil and Gas from the instant case. Application of the zoning ordinances to the federal land being leased by Gulf Oil would, as discussed supra, present a significant threat to an identifiable federal policy and interest. It is for this reason that the County's ordinances cannot constitutionally be applied. The Supremacy Clause of the Constitution precludes the plaintiff from enforcing against Gulf Oil zoning ordinances which allow the County to prohibit Gulf Oil

from conducting oil exploration and extraction activities on federal land.

Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion for a Preliminary Injunction is DENIED and Counts One and Two of Plaintiff's Second Amended Complaint are dismissed.

DATED: April 7, 1977

/s/ ALBERT LEE STEPHENS, JR.
United States District Judge

R E C E I V E D
EMIL E. MELFI, JR.
CLERK, U.S. COURT OF APPEALS

AUG 30, 1979

DOCKETED 8/30/79
Date

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VENTURA COUNTY,	)	Civil Action
	)	
Appellant,	)	Nos. 77-2319 and
	)	77-2716
v.	)	(Consolidated)
	)	
GULF OIL CORPORATION,	)	
	)	
Appellee.	)	
	)	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Ventura County, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of

the United States Court of Appeals for the Ninth Circuit, affirming the denial of appellant's motion for a preliminary injunction and the dismissal of appellant's second amended complaint, entered in this action on August 3, 1979.

This appeal is taken pursuant to 28 U.S.C. § 1254(2).

DOROTHY L. SCHECHTER, County Counsel, County of Ventura, State of California

By _____
R. THOMAS HARRIS
Assistant County Counsel

Counsel for Appellant
Ventura County

UNITED STATES CONSTITUTION

Article IV, § 3, Clause 2

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

UNITED STATES CONSTITUTION

Article VI, Clause 2

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

16 U.S.C. § 480

"The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State."

16 U.S.C. § 551a

"The Secretary of Agriculture, in connection with the administration and regulation of the use and occupancy of the national forests and national grasslands, is authorized to cooperate with any State or political subdivision thereof, on lands which are within or part of any unit of the national forest system, in the enforcement or supervision of the laws or ordinances of a State or subdivision thereof. Such cooperation may include the reimbursement of a State or its subdivision for expenditures incurred in connection with activities on national forest system lands. This section shall not deprive any State or political subdivision thereof of its right to exercise civil and criminal jurisdiction, within or on lands which are a part of the national forest system."

". . . Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any child under the age of sixteen in any mine below the surface; provisions securing the workmen complete freedom of purchase; provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare. None of such provisions shall be in conflict with the laws of the State in which the leased property is situated."

"The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this chapter. Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States."

VENTURA COUNTY ORDINANCE CODE

GENERAL PROVISIONS [partial reproduction]

Sec. 12 - Severability - If any section, sentence, clause, phrase or portion of this Code is for any reason held to be invalid or unconstitutional by the decision of any court, such decision shall not affect the validity of the remaining portion of the Code. The Board [of Supervisors] would have adopted this Code and each section, sentence, clause, phrase, and portions thereof, irrespective of the fact that any one or more sections, sentences, clauses, phrases or portions be invalid or unconstitutional.

VENTURA COUNTY ORDINANCE CODE
DIVISION 8
CHAPTER 1 - ZONING
ARTICLE 1 [partial reproduction]

Sec. 8111 - PURPOSE OF CHAPTER - The text and zoning maps in this Chapter constitute the comprehensive zoning plan and regulations for the unincorporated area of the County of Ventura and are adopted to protect and promote the public health, safety, morals and welfare, and to provide the economic and social advantages which result from an orderly, planned use of land resources. Such regulations are designed and intended to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote

health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision for transportation, water, sewerage, schools, parks, roads, and other public facilities and improvements; and to establish the most beneficial and convenient relationships among the residential, commercial, industrial, agricultural, recreational, and undeveloped areas, having regard to their suitability for the various uses appropriate to each of them and their potentiality for such uses, as indicated by existing conditions and trends in population, in the direction and manner of the uses of land, in building development, and in economic activity.

VENTURA COUNTY ORDINANCE CODE
DIVISION 8
CHAPTER 1 - ZONING
ARTICLE 25 [partial reproduction]
OPEN SPACE (O-S) ZONE

Sec. 8143-1 - Purpose and Intent - It is the intent of this chapter to provide for the preservation, maintenance and enhancement of valuable natural, environmental and recreational resources while permitting reasonable and compatible uses of land. In order to properly manage these resources, criteria and regulations must be formulated to guide uses in the following open space capacities as defined in the Open

Space Element: productive, protective, structural, recreational and scenic preservation. The purpose and intent of this chapter shall be the advancement of the following objectives:

Sec. 8143-1.1 - To assure the continued availability of agricultural land for the production of food and fiber;

Sec. 8143-1.2 - To protect and preserve land areas for the managed production of natural resources;

Sec. 8143-1.3 - To protect, maintain and enhance watershed management to assure a continuing supply of safe water;

Sec. 8143-1.4 - To protect, maintain and enhance air quality;

Sec. 8143-1.5 - To maintain and promote the historical and cultural heritage of the county;

Sec. 8143-1.6 - To promote the health, safety, and welfare of all citizens of the county, through the protective management of hazard areas;

Sec. 8143-1.7 - To shape and guide urban development through open space management;

Sec. 8143-1.8 - To assure the continued availability of open space

lands for the enjoyment of outdoor recreation;

Sec. 8143-1.9 - To preserve and enhance areas of significant scenic amenity, unique natural features, and areas for educational and scientific research;

Sec. 8143-1.10 - To maintain and enhance land areas necessary for the continued survival of valuable wildlife and vegetation;

Sec. 8143-1.11 - To implement the conservation and open space elements of the General Plan;

Sec. 8143-1.12 - To seek coordination of open space lands with the incorporated cities of the county;

Sec. 8143-1.13 - To promote the multiple use of open space lands for the maximum social, economic and ecological benefit to the general public;

Sec. 8143-1.14 - To promote a wide range of land use options for future generations.

Sec. 8143-6 - <u>Uses Subject to Approval by the Planning Commission</u>. The following uses may be permitted subject to staff review and the approval of an Open Space User Permit by the Planning Commission:

Sec. 8143-6.2 - Oil exploration and extraction;

VENTURA COUNTY ORDINANCE CODE
DIVISION 8
CHAPTER 1 - ZONING
ARTICLE 43 [partial reproduction]
VARIANCES AND PERMITS

Sec. 8163-3 - Permits - Permits authorized by this Chapter are granted by the Planning Commission for such time and upon such conditions and limitations it deems necessary

Sec. 8163-3.1 - To assure that the degree of compatibility of property uses which this Chapter is intended to promote and preserve shall be maintained with respect to the particular use or the particular site and consideration of existing and potential uses of property within the zone and the general area in which use is proposed to be located;

Sec. 8163-3.2 - To assure that the proper performance standards and conditions are, whenever necessary, imposed upon uses which are, or which reasonably may be expected to become, obnoxious, dangerous, offensive or injurious to the health, safety or welfare of the public, or a portion thereof, by reason of the emission of noise, smoke, dust, fumes, vibration,

odor, or other harmful or annoying substances;

Sec. 8163-3.3 - To preserve the integrity and character of the zone in which the use will be located, the utility and value of property in the zone and adjacent zones, and the integrity of zones in incorporated areas if the proposed use is within the sphere of interest of such incorporated area;

Sec. 8163-3.4 - To assure that the use will not be or become detrimental to the public interest, health, safety, convenience, or the general welfare.

Sec. 8163-14 - Special Conditions for Oil and Gas Permits Heretofore and Hereafter Issued - It is declared to be in the interest of the public health, safety, welfare and purpose and intent of this Chapter that the following conditions shall be and they are hereby automatically imposed and made a part of any permit for oil and gas drilling and extraction hereafter issued and as to any permit issued prior to November 30, 1961, shall apply to any drilling or other activity commenced after November 30, 1961:

Sec. 8163-14.1 - Soundproofing - Whenever the drilling or redrilling of any oil or gas well commenced after November 30, 1961, is situated within five hundred

(500) feet of any dwelling not owned by the permittee, or if applicable, the lessor of the permittee, the derrick portable rig and machinery or equipment used to operate in connection with drilling, shall be enclosed with fire resistant and soundproofing materials; unless the Planning Director is furnished written consent to waive such condition by all owners and tenants of said dwellings. If a noise nuisance develops after written consent has been given and if inspection under supervision of the Planning Director sustains the noise level consitutes a nuisance, the original provisions of soundproofing will prevail. Whenever drilling is by portable drilling rig and will be accomplished and said rig removed within a thirty (30) day period, soundproofing requirements shall not apply;

Sec. 8163-14.2 - That the exercise of any right granted by the permit shall conform in all respects to the regulations and requirements of the California State Regional Water Pollution Control Board No. 4; and that all water, mud, oil, or any other substances removed as waste material from the land for which the permit is issued shall be deposited in a disposal site approved by the Planning Commission and the California State Regional Water Pollution Control Board;

Sec. 8143-14.3 - That no earthen sump shall be constructed or maintained within five hundred (500) feet, and no drilling shall be permitted within one hundred (100) feet of any natural channel in which there is or may be flowing water;

Sec. 8163-14.4 - That within ninety (90) days after a well is producing, the derrick, all boilers and all other drilling equipment shall be removed from the premises unless permission to store them on the premises is obtained from the Planning Commission;

Sec. 8163-14.5 - That all sumps, or debris basins, or any depressions, ravines, gullies, barrancas or the like which are used for the impounding or depositing of water, mud, oil, or any other fluid, semi-fluid, or any combination thereof, shall be fenced. When any such place is located more than one-half (1/2) mile away from any school, playground or dwelling, it shall be enclosed by a cattle fence with wood or steel posts not less than four (4) feet above the ground with not less than three (3) strands of barb wire secured horizontally to posts. When any such place is located within one-half (1/2) mile of any school, playground or dwelling it shall be enclosed by a wire fence of a wire mesh type with a minimum of two (2) inches by four (4) inches

opening and said fence shall be secured to steel posts not less than five (5) feet in height above the ground and said posts shall have forty-five degree (45°) arms attached to tope of posts with three (3) strands of barb wire attached thereto;

Sec. 8163-14.6 - That no permanent buildings or structures shall be erected within one hundred (100) feet of boundaries or right of way of any public street or highway;

Sec. 8163-14.7 - That the permittee shall at all times comply with the provisions of the Public Resources Code of the State of California, relating to the protection of underground water supply and in connection with oil and gas extraction;

Sec. 8163-14.8 - That upon abandonment of any well or cessation of drilling operations, all earthen sumps or other depressions containing drilling mud, oil or other waste products from the drilling operation shall be cleaned up by removing such waste products or by consolidating all mud, oil, or other waste products into the land by disking, harrowing and leveling to restore the land to the condition existing prior to the issuance of this permit as nearly as practicable so to do;

Sec. 8163-14.9 - Transfer of Permit. Unless otherwise provided in the terms of a permit, the permit shall expire no later than when the permitee's ownership, lease or other right to develop the property in the manner described in the application is terminated. A permit may be transferred to another person only with the approval of the Planning Commission. A transfer shall be null and void unless and until (a) the Planning Commission has approved the transfer, (b) the Planning Commission has been furnished satisfactory evidence of the transfer (c) the transferee files with the Planning Commission a writing wherein he obligates himself to comply with every term and condition of the permit, and (d) the transferee has filed an approved bond;

Sec. 8163-14.10 - That no drilling or other uses for which this permit is granted shall be commenced or continued unless and until permittee has filed, and the Planning Commission has accepted, a bond in the penal amount of twenty-five hundred (2500.00) for each well that is drilled or to be drilled. Any operator may, in lieu of filing such bond for each well drilled, redrilled, produced or maintained, file a bond in the penal amount of ten thousand dollars ($10,000.00) to cover all operations conducted in the County

of Ventura, a political subdivision of the State of California, conditioned upon the permittee well and truly obeying, fulfilling and performing each and every term and provision in the permit, and that in case of any failure by the permittee to perform or comply with any term or provision thereof, the Planning Commission may, by resolution, declare the bond forfeited and the sureties and principal will be jointly and severally obligated to pay forthwith the full amount of the bond to the County of Ventura. The forfeiture of any bond shall not insulate the permittee from liability in excess of the sum of the bond for damages or injury or expense or liability suffered by the County of Ventura from any breach by permittee of any term or condition of said permit or of any applicable ordinance or of this bond. The transfer of this permit, as provided for in Section 8163-14.9, Ventura County Ordinance Code, shall not be effective unless and until the transferree has also complied with this condition for posting an approved bond;

Sec. 8163-14.11 - That all drilling and production operations shall be conducted in such a manner as to eliminate, as far as practicable, dust, noise, vibration or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for and the production

of oil, gas and other hydrocarbon substances. Where economically feasible, generally accepted and used tehnological improvements for reducing factors of nuisance and annoyance shall be employed by permittee.

F I L E D

JUN 2, 1976

Clerk, U.S. District Court
Central District of California
_____Deputy

DOROTHY L. SCHECHTER
County Counsel
R. THOMAS HARRIS
Assistant County Counsel
501 Poli Street
Ventura, California 93001
Telephone: (805) 648-6131

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE
CENTRAL DISTRICT OF CALIFORNIA

VENTURA COUNTY, a political subdivision of the State of California, Plaintiff, vs. GULF OIL CORPORATION, and DOES I through XXX, inclusive, Defendants.	No. 76-1723 (ALS) DECLARATION OF JOSEPH C. NESBITT

I, JOSEPH C. NESBITT, state and declare:

. . .

For approximately eleven years (1955-1966), I served as a member of the Ventura County Planning Commission. During my period of service on the Planning Commission, Ventura County routinely required and obtained compliance with its zoning ordinances by private parties engaging in land use activities on federally owned lands within the Los Padres National Forest.

. . .

Executed at Ventura, California, on June 2nd, 1976.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Joseph C. Nesbitt
JOSEPH C. NESBITT

Subscribed and sworn to before me

June 2, 1976
(Date)

/s/Mattie L. Brown
Notary Public in and for the County of Ventura, State of California.

OFFICIAL SEAL
MATTIE L. BROWN
NOTARY PUBLIC - CALIFORNIA
Ventura County

My comm. expires
APR 11, 1980
948 E. Main St.,
Santa Paula, CA
93060

F I L E D

MAY 26, 1976

ROBERT L. HAMM, County Clerk
By /s/ BETTINA JUE
Deputy County Clerk

DOROTHY L. SCHECHTER
County Counsel
R. THOMAS HARRIS
Assistant County Counsel
501 Poli Street
Ventura, California 93001
Telephone: (805) 648-6131

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA

VENTURA COUNTY, a political subdivision of the State of California,	No. 60932
Plaintiff,	DECLARATION OF DON SPERLING
vs.	Hearing Date: May 28, 1976
GULF OIL CORPORATION, and DOES I through XXX, inclusive,	
Defendants.	

I, DON SPERLING, state and declare:

I am employed as an Associate Planner in the Planning Division of the

Ventura County Environmental Resource Agency.

For approximately the past seven years, my duties have included the processing of conditional use permits for the County of Ventura. During that time, I have never had a member of the U. S. Forest Service, the U. S. Geological Survey or the U. S. Bureau of Land Management dispute the County of Ventura's authority to require conditional use permits of private operators exploring for oil on public lands. In practice, the personnel of these federal agencies have been most cooperative in supplying information to assist the County in the processing of such conditional use permit applications and have suggested conditions which the County might impose to protect the interests of private property owners in the vicinity of federal lands leased for oil exploration (such as conditions prohibiting the excessive emanation of dust on access roads).

Ventura County conditional use permit records in my possession indicate

that at least 13 conditional use permits for oil exploration by private operators on lands within the Los Padres National Forest have been granted by Ventura County within the past ten years. Additionally, the records show that at least one such application is currently being processed. The conditional use permits have covered the following applicants and lands:

No. 1:

File No.: CUP 3533

Issued: (Filed 7-5-75)

Applicant: T. F. Johnson

Assessor's Parcel No.: 8-150-01

Section, Township & Range: Sec. 28, T4N, R24W, SBB&M

(U. S. Forest Service personnel are currently working with Ventura County staff in the preparation of an EIR for another application (CUP 3532) near the subject site on the Laguna Ranch.)

No. 2:

File No.: CUP 3585

Issued: 12-18-75

Applicant: W. K. Barker

Assessor's Parcel No.: 55-100-02

Section, Township & Range: Sec. 22, T4N, R19W, SBB&M

(Mr. D. F. Russell of the U. S. Geological Survey and U.S. Ranger Art Carroll worked with Ventura County staff in processing of the subject application.)

No. 3:

File No.: CUP 3470

Issued: 11-6-75

Applicant: Argo Petroleum Corp.

Assessor's Parcel No.: 55-010-08

Section, Township & Range: Sec. 3, T4N, R19W, SBB&M

(The surface rights of the Hopper Ranch were purchased by the U. S. Government on 12-18-74. On 10-3-75, Mr. Donald J. Hankla, Acting Regional Director of the U. S. Fish and Wildlife Service, requested that Ventura County impose certain restrictions on drilling operations in the County's Conditional Use Permit and this was done by the Ventura County Planning Commission.)

No. 4:

File No.: CUP 3413

Issued: 12-6-74

Applicant: Supreme Oil & Gas Corp.

Assessor's Parcel No.: 1-230-07

Section, Township & Range: Sec. 19, T8N, R23W, SBB&M

(U. S. Ranger T. G. Zrelak, U. S. Forest Service, submitted 13 pages of comments and recommendations to the County's staff for consideration during the County's processing of the subject conditional use permit application.)

No. 5:

File No.: CUP 3071

Issued: 5-21-69

Applicant: Getty Oil Co.

Assessor's Parcel No.: 8-150-05

Section, Township & Range: Sec. 27, T4N, R24W, SBB&M

No. 6:

File No.: CUP 3028

Issued: 12-4-68

Applicant: Spectrum Oil Co.

Assessor's Parcel No.: 15-010-01

Section, Township & Range: Sec. 6, T5N, R22W, SBB&M

No. 7:

File No.: CUP 3029

Issued: 12-4-68

Applicant: Spectrum Oil Company

Assessor's Parcel No.: 15-020-01

Section, Township & Range: Sec. 3, T5N, R22W, SBB&M

No. 8:

File No.: SUP 2869

Issued: 10-4-67

Applicant: Imperial Oil & Gas Ltd.

Assessor's Parcel No.: 16-130-13

Section, Township & Range: Sec. 33, T5N, R19W, SBB&M

No. 9:

File No.: SUP 2829

Issued: 7-19-67

Applicant: Anza Pacific Corp.

Assessor's Parcel No.: 16-130-04

Section, Township & Range: Sec. 28, T5N, R19W, SBB&M

No. 10:

File No.: SUP 2794

Issued: 6-21-67

Applicant: Argo Petroleum Corp.

Assessor's Parcel No.: 16-130-01

Section, Township & Range: Sec. 30, T5N, R19W, SBB&M

No. 11:

File No.: SUP 2608

Issued: 8-3-66

Applicant: S. E. Madar

Assessor's Parcel No.: Numerous Parcels

Section, Township & Range: Numerous sections, including some in T8N, R22W, SBB&M and T9N, R22W, SBB&M

No. 12:

File No.: SUP 2421

Issued: 10-20-65

Applicant: Spectrum Oil Co.

Assessor's Parcel No.: 6-180-02

Section, Township & Range: Sec. 26, T6N, R22W, SBB&M

No. 13:

File No.: SUP 2565

Issued: 10-5-66

Applicant: Spectrum Oil Co.

Assessor's Parcel No.: 15-060-08

Section, Township & Range: Sec. 23, T5N, R2W, SBB&M

No. 14:

File No.: SUP 2317

Issued: 6-7-65

Applicant: Eastern Interior Oil Comp.

Assessor's Parcel No.: 16-170-01

Section, Township & Range: Sec. 18, T5N, R18W, SBB&M

Processing of recent conditional use permits for oil extraction in the general vicinity of Gulf Oil Corporation's drilling site has revealed a large and widespread public interest in the impact of such activities on the environment and neighboring residences. For example, in hearings before the Ventura County Planning Commission and Board of Supervisors which I attended regarding CUP No. 3543 (oil exploration by Phoenix West Oil and Gas Corp.) within the past four months, approximately 60 persons expressed concern, either personally or through petitions,

regarding impacts on the environment, on Koenigstein Road, and on neighboring residences. Phoenix West's proposed activities under CUP 3543 are located in the vicinity of Koenigstein Road, approximately two miles from Gulf Oil Corporation's present drilling site.

Executed at Ventura, California, on May 25, 1976.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ DON SPERLING
DON SPERLING

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office. ROBERT L. HAMM, County Clerk of the County of Ventura, State of California, and ex officio Clerk of the Superior Court therein.

Dated: May 27, 1976

(SEAL)

By /s/ Anna M. Martinez
Deputy County Clerk